

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ROGER CHARLES LADOUCEUR,)
Plaintiff,)
v.)
MACADO'S, INC.)
)
Serve: Dean M. Nichols)
Registered Agent)
268 Newman Ave.)
Harrisonburg, VA 22801)
)
MACADO'S OF BECKLEY, LLC)
)
Serve: Dean M. Nichols)
Registered Agent)
268 Newman Ave.)
Harrisonburg, VA 22801)
)
MACADO'S OF BLUEFIELD, LLC)
)
Serve: Dean M. Nichols)
Registered Agent)
268 Newman Ave.)
Harrisonburg, VA 22801)
)
MACADO'S OF HARRISONBURG, INC.)
)
Serve: Dean M. Nichols)
Registered Agent)
268 Newman Ave.)
Harrisonburg, VA 22801)
)
MACADO'S OF THE CAROLINAS, INC.)
)
Serve: Dean M. Nichols)
Registered Agent)
268 Newman Ave.)
Harrisonburg, VA 22801)
)
Defendants.)
)
Case No. 7:15-cv-00588

THE CREEKMORE LAW FIRM PC

COMPLAINT

Plaintiff, Roger Charles LaDouceur, brings this action for copyright infringement against Defendants Macado's, Inc., Macado's of Beckley, LLC, Macado's of Bluefield, LLC, Macado's of Harrisonburg, Inc. and Macado's of the Carolinas, Inc., stating as follows:

PARTIES

1. Plaintiff Roger Charles LaDouceur is a tattoo artist residing in Roanoke County, Virginia. He is the owner and operator of Star City Tattoos LLC in Roanoke County, Virginia.
2. Defendant Macado's Inc. is a Virginia Corporation with a principal office listed at 120 Church Avenue, Suite B, in the City of Roanoke, Virginia.
3. Defendant Macado's of Beckley, LLC, is a Virginia Limited Liability Company with a principal office listed at 120 Church Street, in the City of Roanoke, Virginia.
4. Defendant Macado's of Bluefield, LLC, is a Virginia Limited Liability Company with a principal office listed at 120 Church Street, in the City of Roanoke, Virginia.
5. Defendant Macado's of Harrisonburg, Inc. is a Virginia Corporation with a principal office listed at 120 West Church Avenue, in the City of Roanoke, Virginia.
6. Defendant Macado's of the Carolinas, Inc. is a North Carolina Corporation with a principal office listed at 120 West Church Avenue, in the City of Roanoke, Virginia.

JURISDICTION AND VENUE

7. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States, 17 U.S.C. § 101 et seq.

8. This Court has original and exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), as this action raises federal questions arising under the laws of the United States, namely, the Copyright Act, 17 U.S.C. § 101 et seq.

9. Defendants are subject to personal jurisdiction in this Court because at all times relevant to this suit they were Virginia corporations (Macado's, Inc. and Macado's of Harrisonburg, Inc.) or Virginia limited liability companies (Macado's of Beckley, LLC and Macado's of Bluefield, LLC), or otherwise a foreign corporation registered to do business in Virginia (Macado's of the Carolinas, Inc.), and all having their principal places of business in the City of Roanoke, Virginia, in this judicial district.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because all Defendants have principal offices and registered agents in this judicial district, and because the acts of infringement giving rise to this action arose or occurred in this district and/or caused harm to Plaintiff in this district.

COUNT I — COPYRIGHT INFRINGEMENT

11. Plaintiff, Roger Charles LaDouceur, is the artist and creator, and sole and exclusive author, of the original tattoo design created on October 16, 2013 and depicted at ***Exhibit A*** (the "Tattoo") and entitled "I Am Not a Monster."

12. The Tattoo is the subject of Certificate of Registration No. VA0001974762, evidenced by ***Exhibit B***, issued by the United States Copyright Office in favor of Plaintiff as sole author.

13. Plaintiff has not licensed or otherwise authorized Defendants to reproduce, display, distribute or make any use of the Tattoo.

14. The Tattoo has intrinsic value to Plaintiff inasmuch as the Tattoo was an original work of authorship of Plaintiff, reflecting his skill, creativity and talent as a tattoo artist.

15. The Tattoo has commercial value to Plaintiff inasmuch as it was originally created for a client on whose leg Plaintiff placed the Tattoo in October 2013, and since then, Plaintiff has utilized the Tattoo as a marketing device to showcase his talents and skill and to advertise his tattoo business, Star City Tattoos LLC, through and as a result of which Plaintiff has received numerous accolades, attention and further business and revenue as a tattoo artist.

16. In 2014, without license, permission or other authority from Plaintiff, Defendants knowingly, willfully and intentionally usurped the Tattoo for their own commercial purposes, making an exact or substantially similar copy and duplication of it for the purpose of commercial advertising and promotion associated with their ongoing restaurant businesses.

Attached at ***Exhibit C*** is a comparison of the Tattoo with Defendants' duplication thereof.

17. Upon information and belief, Defendants obtained the Tattoo from photographs posted to and displayed on the Internet by Plaintiff, including through such social media vehicles as Facebook and/or Instagram. (See ***Exhibit D***.)

18. Defendants' unlawful and unauthorized use of the Tattoo became Defendants' singular iconic image for the commercial advertising and promotion of Defendants' restaurant businesses' Halloween 2014 seasonal specials and events.

19. Defendants unlawfully utilized the Tattoo to promote their restaurant businesses' seasonal food, drink and event specials leading up to and including Halloween on October 31, 2014, including but not limited to:

(a) On the Internet, including on Facebook business pages associated with their restaurants in Beckley, Blacksburg, Bluefield, Boone, Bristol, Charlotte,

Christiansburg, Farmville, Galax, Harrisonburg, Kingsport, Lexington, Lynchburg, Marion, Meadowview, Radford, Roanoke and Salem. (See ***Exhibit E***);

- (b) On physical advertisements and promotional materials within one or more of the same restaurant locations. (See ***Exhibit F***);
- (c) On promotional merchandise sold or offered for sale in one or more of the same restaurant locations. (See ***Exhibit G***.)

20. Defendants' unlawful use of the Tattoo met with great commercial success and popularity among their restaurant businesses' customer base, directly contributing to further acts of infringement by Defendants' customers through repeated additional public postings and displays of images of Defendants' infringement of the Tattoo on social media venues on the Internet, and including sales and/or offers of sale of Defendants' goods bearing the infringing use of the Tattoo on secondary markets such as eBay. (See ***Exhibits G, H***.)

21. Upon information and belief, Defendants derived substantial revenues and profits from their unlawful and unauthorized use of the Tattoo to promote their Halloween 2014 seasonal drink and food specials and activities in each of their restaurants at the foregoing locations.

22. At least as early as October 31, 2014, Defendants were placed on public notice that their use of the Tattoo was unauthorized and unlawful. (See ***Exhibit I***.)

23. Defendants' unlawful use of the Tattoo continued unabated subsequent to October 31, 2014, and has continued into and through calendar year 2015 and into the current Halloween 2015 season.

24. Defendants have continued to derive substantial revenue and profits from their continued unlawful and unauthorized use of the Tattoo through the Halloween 2015 season.

25. By reproducing, displaying, distributing and making other uses of the Tattoo for their own commercial purposes, without the right, license, authority or permission of Plaintiff, Defendants knowingly, willfully, and intentionally infringed Plaintiff's copyright in the Tattoo.

26. Due to the commercial success and attention Defendants have garnered through their unlawful and unauthorized use of the Tattoo, they have contributed to and induced the further infringement of Plaintiff's copyright in the Tattoo through the numerous subsequent public displays and postings of photographs of Defendants' infringing images by Defendants' customers, and through the continued purchase, display, wear and use of Defendants' promotional merchandise bearing Defendants' infringing images by Defendants' employees and customers, and through resale of such items on secondary markets by Defendants' customers.

27. Defendants acted with knowledge that they were not the authors or owners of the Tattoo, with knowledge that they had obtained no rights therein from Plaintiff, and without any reasonable basis to believe that their conduct was innocent.

28. Defendants acted with deliberate indifference to and willful disregard for the public notices Defendants received that their actions and their use of the Tattoo were unauthorized and unlawful.

29. Defendants' numerous and varied uses of the Tattoo across their restaurant businesses in numerous cities and locations, in a great number of ways on promotional advertisements and merchandise, and as the iconic image selected to represent Defendants' Halloween 2014 seasonal specials and activities, and Defendants' continued unlawful and

unauthorized use of the Tattoo in the same ways throughout calendar year 2015 and into the 2015 Halloween season, illustrate the commercial value of the Tattoo.

30. Defendants' infringement of Plaintiff's copyright in the Tattoo has been knowing, purposeful, willful and intentional, in disregard of and with deliberate indifference to Plaintiff's rights in the same.

31. As a result of all of the foregoing acts of infringement of Plaintiff's copyright in the Tattoo by Defendants, Defendants have realized substantial revenue and profits, and Plaintiff has suffered a corresponding loss, damage, harm and injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- (a) Judgment against Defendants jointly and severally for infringement of Plaintiff's copyright in the Tattoo, pursuant to 17 U.S.C. § 501;
- (b) A permanent injunction prohibiting Defendants' continued unlawful and unauthorized use of the Tattoo in any manner or form, pursuant to 17 U.S.C. § 502;
- (c) An order mandating the impoundment and destruction of any remaining items, goods and materials bearing Defendants' unlawful and unauthorized use of the Tattoo, pursuant to 17 U.S.C. § 503(b);
- (d) An award of Plaintiff's actual damages, as authorized by 17 U.S.C. §§ 504(a)(1) and (b);
- (e) An award of all those profits of Defendants attributable to their use of the Tattoo, which shall include but not be limited to all profits across all of their restaurant businesses from the sale of food, drink and merchandise during and

through the entire Halloween 2014 season, and continuing past October 31, 2014, and into 2015 to present, to the extent that Defendants continued their unlawful and unauthorized use of the Tattoo on promotional merchandise, all as allowed by 17 U.S.C. §§ 504(a)(1) and (b);

- (f) An award of Plaintiff's full costs and reasonable attorneys' fees incurred in the prosecution of this action, pursuant to 17 U.S.C. § 505.
- (g) An award of prejudgment interest on any award to Plaintiff; and
- (h) Such other and additional relief as this Court deems just and proper.

A TRIAL BY JURY ON ALL ISSUES SO TRIABLE IS REQUESTED.

Dated: October 30, 2015

Respectfully submitted,

/s/ James R. Creekmore

James R. Creekmore (VSB No. 36246)
Andrew P. Connors (VSB No. 80248)
Attorneys for Plaintiff
The Creekmore Law Firm PC
318 N. Main Street
Blacksburg VA 24060
(540) 443-9350
(540) 443-9352 (fax)
james@creekmorelaw.com
andrew@creekmorelaw.com

THE CREEKMORE
LAW FIRM PC